



October 10, 2001

Ms. Mary Kay Fischer
City Attorney
City of Killeen
101 North College
Killeen, Texas 76541

OR2001-4586

Dear Ms. Fischer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153082.

The City of Killeen (the "city") received a request for copies of specified travel records and telephone call records. You state that you are in the process of providing the requestor with the requested travel records. You claim, however, that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.117 of the Government Code and Rule 508 of the Texas Rules of Evidence. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.¹

Initially, we note that section 552.022 of the Government Code makes certain information public, unless it is expressly confidential under other law. One category of public information under section 552.022 is information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body. *See* Gov't Code § 552.022(a)(3). The submitted phone bill is information in an account relating to the expenditure of funds by a governmental body. You claim that portions of the phone bill are protected from disclosure under the informer's privilege. The common law informer's privilege, incorporated into the Public Information Act (the "Act") by section 552.101 of the

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Government Code,² has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); see also *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928); *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege under *Roviaro* exists to protect a governmental body's interest. Thus, it may be waived by a governmental body and is not "other law" that makes information confidential under section 552.022. See Open Records Decision No. 549 at 6 (1990). Accordingly, we do not address your common law informer's privilege claim with regard to the submitted phone bill. You also claim that portions of the phone bill are excepted from disclosure pursuant to section 552.108 of the Government Code. However, section 552.108 is a discretionary exception under the Act and also does not constitute "other law" for purposes of section 552.022(a).³ See *id.* Therefore, we do not address your section 552.108 claim with regard to the submitted phone bill. Accordingly, you must release the submitted information that you have highlighted in blue to the requestor.

However, you claim that the submitted information that you have highlighted in yellow is excepted from disclosure pursuant to Rule 508 of the Texas Rules of Evidence. Recently, the Texas Supreme Court held in *In re The City of Georgetown*, 2001 WL 123933, at *8 (Tex. Feb. 15, 2001) (No. 00-0453) that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." Accordingly, we address your claim regarding Rule 508 of the Texas Rules of Evidence. Rule 508 provides in pertinent part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

³ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

Tex. R. Evid. 508. You state that the submitted information that you have highlighted in yellow consists of the phone numbers of witnesses, victims, suspects, and confidential informants who have furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer. You state that the release of these phone numbers would interfere with law enforcement because it could potentially endanger the lives of witnesses and confidential informants. You also state that the release of this information could allow a person accused of a crime to discover the identity of the person called by peace officers for the purposes of intimidating and harassing them, thus, leading to the interference with law enforcement. Based on our review of your arguments and the relevant information, we conclude that the release of the phone numbers that you have highlighted in yellow would "disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer." Accordingly, we conclude that the city may withhold these phone numbers from disclosure pursuant to Rule 508 of the Texas Rules of Evidence.

You claim that the home and personal cellular phone numbers of officers and the telephone numbers of family members of these officers that you have highlighted are excepted from disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(2) applies only to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In Open Records Decision No. 670 (2000), this office concluded that governmental bodies covered by the Public Information Act may withhold the home and personal cellular phone numbers of peace officers from disclosure without the necessity of requesting an attorney general decision as to whether section 552.117(2) applies to such numbers. Accordingly, you must withhold from disclosure the home and personal cellular phone numbers of peace officers and the telephone numbers of family members of peace officers that you have highlighted pursuant to section 552.117(2) of the Government Code.

In summary, you must release the submitted information that you have highlighted in blue to the requestor. However, the remaining information is excepted from disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must

appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 153082

Enc: Submitted documents

c: Ms. Ginger Pope
Killeen Daily Herald
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(w/o enclosures)